



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 7941-99
12 April 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: CDR [REDACTED] USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 14 Dec 99 w/attachment
(2) PERS-311 memo dtd 16 Mar 00
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness report for 29 April 1995 to 12 May 1996, a copy of which is at Tab A.

2. The Board, consisting of Messrs. Geisler, Leeman, and Silberman, reviewed Petitioner's allegations of error and injustice on 11 April 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.


b. In correspondence attached as enclosure (2), the Navy Personnel Command office having cognizance over fitness report matters has recommended approving Petitioner's request.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following fitness report and related material:

Date of Report	Reporting Senior	Period From	of Report To
10 May 96	 USN	29 Apr 95	12 May 96

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

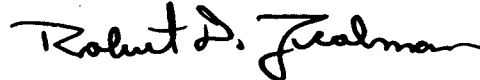
d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



For W. DEAN PFEIFFER
Executive Director



7941-99

DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
16 March 2000

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: CDR [REDACTED], USN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) DON Inspector General's letter 5041/19960021 Ser N61/1468 of 18 August 1999

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of her fitness report for the period 29 April 1995 to 12 May 1996.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and her right to submit a statement. The member indicated she desired to submit a statement, however, the member's statement and reporting senior's endorsement has not been received by (PERS-311).

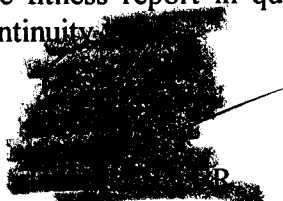
b. The member alleges she was rated unfairly after giving testimony in an investigation against the reporting senior. In viewing petitions that question the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that he acted for an illegal purpose. We believe Commander Benson has done so. No specifics of poor performance are provided in the comment section to substantiate the trait grades assigned. We note the significantly higher grades and promotion recommendation on the previous fitness report by the same reporting senior.

c. Further review of the member's record revealed the fitness report for the period 1 September 1998 to 31 August 1999 missing from her record. If the member will forward a copy of the report we will have it placed in her digitized record.

d. Reference (b), the Inspector General's letter substantiated the member's allegation that the reporting senior was bias against females staff members.

e. The member proves the report to be unjust or in error.

3. We recommend removal of the fitness report in question, replacing it with a "SECNAV" memorandum to maintain report continuity.

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Head, Performance
Evaluation Branch